Supreme Court, U.S.
FILED

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No. _____

IN THE

Supreme Court of the United States

JOSEPH LEONARD NEUFELD,

PETITIONER

v.

THE TOWN OF SAN ANSELMO,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO

The Superior Court of California, Appellate Division
County of Marin

PETITION FOR WRIT OF CERTIORARI

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24pp

QUESTIONS PRESENTED

1. The right of *interstate* travel is guaranteed by the federal constitution. Does the right of *interstate* travel necessarily embrace the right of *intrastate* travel, so that a citizen complaining of a state's obstruction, interference or burden with his or her right to *intrastate* travel sets up a cognizable cause under the federal constitution?

2. There exists a privilege of using the public streets and highways. (*e.g.*, as a common carrier.) Is all vehicular travel upon the public ways a state-granted privilege, or does there exist, in some instances, a right to travel upon them? (*e.g.*, as an itinerate, noncommercial traveler using the public ways in the ordinary and common mode.)

3. If the right to pass freely within a state is cognizable under the federal constitution, and if a distinction exist between a privilege, on the one hand, and a right to use the public ways, then does a state possess the power to (a) convert the right into a privilege; and (b) impose one or more license, privilege, or excise tax as a condition, precedent to exercising the right?

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JUDICIAL OPINIONS AND ORDERS

The Appellate Division of the Superior Court did not publish its opinion. (App., 2a-3a.) The opinion of the trial court is unreported. (App., 1a.) The Court of Appeal (App., 4a) and the California Supreme Court (App., 5a) summarily denied my petitions for discretionary review.

JURISDICTION

The Appellate Division of the Superior Court entered judgment on August 22, 2002. (App., 2a-3a.) The Court of Appeal denied my petition for discretionary review on October 16, 2002. (App., 4a.) The California Supreme Court denied my petition for discretionary review on December 11, 2002. (App., 5a.) I invoke this court's jurisdiction under 28 U.S.C. §1257(b).

LAWS INVOLVED

California Vehicle Code:

- §305. A "driver" is a person who drives or is in actual physical control of a vehicle....
- §360. "Highway" is a way or place...publicly maintained and open to the use of the public for purposes of vehicular travel.
- §590. "Street" is a way or place...publicly maintained and open to the use of the public for purposes of vehicular travel.
- §12500(a). No person shall drive a motor vehicle upon a highway, unless the person then holds a valid driver's license....

- §4000(a)(1). No person shall drive, move, or leave standing upon a highway...any motor vehicle...unless it is registered and the appropriate fees have been paid....
- §14607.4(a). Driving a motor vehicle on the public streets and highways is a privilege, not a right.
- §22651(o)(1) Any peace officer...may remove a vehicle...with a registration expiration date in excess of six months....

California Revenue & Taxation Code:

- §10751. A license fee is hereby imposed for the privilege of operating upon the public highways in this state any vehicle of a type which is subject to registration under the Vehicle Code....

United State Constitution:

- Article I §8 cl.7. Congress shall have power to...establish post offices and post roads.
- Article IV §2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.
- Amend.XIV §1. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law....

STATEMENT OF THE CASE

Respondent seized my motorcycle as I traveled upon the public streets. It based the seizure upon the fact I displayed no license plates, did not register my motorcycle, and possessed no driver's license. I instituted an action in replevin to recover my property. (App., 2a.)

I filed a motion for summary judgment. (App., 1a.) I based my motion on the facts that I traveled in conjunction with my liberty (App., 7a) and without using the streets for compensation, hire, gain or profit. (App., 7a.) I interwove my federal right to travel — emphasizing my right to use the streets in the ordinary mode, while distinguishing between the privilege of using the same as a place of business (*e.g.*, as a common carrier.) (App., 1a.) Respondent did not dispute the facts. The motion contained all the federal questions propounded to this court. (App., 1a, 6a-7a.)

The trial court concluded that traveling by motorcycle, under any circumstance, constitutes the privilege of "driving." It ruled that "[g]overnment is permitted to regulate the conditions of travel by requiring driver's licenses, registration, and compliance with a myriad of traffic laws without infringing on the right to travel. (*Quackenbush v. Superior Court* (1997) 60 Cal.App.4th 454, 469.) The right of an indi-

vidual to operate a private automobile cannot be equated with the fundamental constitutional right of an individual to travel. (*Tolces v. Trask* (1999) 76 Cal.App.4th 285, 289.)"

It found I was a "driver," citing California Vehicle Code §305 [definition of driver], §4000(a) [registration of vehicles] and §12500(a) [driver's license requirement]. I was required to register my motorcycle, display license plates and possess a driver's license.

After disposition of the case, I renewed my right-to-travel argument on appeal. The Appellate Division affirmed, concluding "[a]ppellant argues that application of [Vehicle Code] §22651 [permitting seizure of unregistered vehicles] unduly impinges on his right to travel. His argument is without merit. *Reitz v. Mealy* (1941) 314 U.S. 33. The government may regulate conditions of travel, including licensing, registration and compliance with traffic laws. *Quackenbush v. Superior Court* (1997) 60 Cal.App.4th 454; *Tolces v. Trask* (1999) 76 Cal.App.4th 285." (App., 3a.)

My petitions for discretionary review to the California Court of Appeal and the California Supreme Court, renewing my constitutional right-to-travel claim, were summarily denied.

WHY REVIEW THIS CASE?

I. *Right of Interstate Travel Naturally and Necessarily Embraces Intrastate Travel.*

In referring to the right to travel, "[t]he Court had long recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." (*Saenz v. Roe* (1999) 526 U.S. 489, 499, 143 L.Ed.2d 689, 701, 119 S.Ct. 1518, 1524.)

"[T]he right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any state is a right secured by the 14th Amendment and by other provisions of the Constitution." (*Edwards v. California* (1941) 314 U.S. 160, 179, 86 L.Ed. 119, 62 S.Ct. 164, 169 [Douglas, J., conc.opin.])

This court has specifically recognized that the citizen "has the right to come to the seat of government to assert any claim he may have upon that government, or to transact any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions. He has a right to free

access to its seaports, through which all the operations of foreign trade and commerce are conducted, to the sub-treasuries, the land offices, the revenue offices, and the courts of justice in the several States, and this right is in its nature independent of the will of any State over whose soil he must pass in the exercise of it." (*Crandall v. Nevada* (1867) 73 U.S. 35, 44, 18 L.Ed. 745, 747.)

A citizen who complains that a state interferes, obstructs or otherwise burdens his or her right to intrastate travel necessarily states a cognizable cause under the federal constitution.

II. *Distinction Between Right and Privilege of Using the Public Streets.*

A. Use of the streets for gain is a privilege.

This court has rejected the contention that licensing, registration, taxation or other regulatory schemes imposed by states violate either the commerce clause (*Clark v. Poor* (1927) 274 U.S. 554, 557, 71 L.Ed. 1199, 1201, 47 S.Ct. 702, 703 [appellants, moving in interstate commerce, claimed violation of commerce clause]) or their right to travel. (*Hendrick v. Maryland* (1915) 235 U.S. 610, 624, 59 L.Ed. 385, 392, 35 S.Ct. 140, 143 [plaintiff in error, moving in interstate commerce, claimed he had a right to travel.])

This court has distinguished that the "streets belong to the public and are primarily for the use of the public in the ordinary way. Their use for the purposes of gain is special and extraordinary, and, generally at least, may be prohibited or conditioned as the Legislature deems proper. (*Stephenson v. Binford* (1932) 287 U.S. 251, 264, 77 L.Ed. 288, 294-295, 53 S.Ct. 181, 184, 87 A.L.R. 721, 727; *Packard v. Banton* (1924) 264 U.S. 140, 144, 68 L.Ed. 596, 607-608, 49 S.Ct. 257, 259.)

At each stage in the lower courts, I acknowledged this privilege. I distinguished myself from these cases by emphasizing that I use the public ways in their ordinary and usual mode without using the same as a place of business.

B. Distinction from ordinary travel.
This court, in distinguishing the right of the public to the common ways, and those occupying the same for gain, noted:

"The ordinary traveler, whether on foot or in a vehicle, passes to and fro along the streets, and its use and occupation thereof are temporary and shifting. The space he occupies one moment he abandons the next to be occupied by any other traveler. This use is common to all members of the public.... But the use made by the telegraph company is...permanent and

exclusive. It as effectually and permanently dispossesses the general public as if it had destroyed that amount of ground." (*City of St. Louis v. Western Union Tel. Co.* (1893) 148 U.S. 92, 98-99, 37 L.Ed. 380, 13 S.Ct. 485, 487-488.)

The root of the privilege lie in the type of use. The ordinary, itinerate traveler may not be classified in the same category with the commercial user of the public roads.

C. Roads lie at the foundation of government. "The necessity for roads lies at the foundation of civil government. In a representative government the people...must reach the voting places; they must reach the seat of county government to discharge their duties as jurors and taxpayers, and transact county business; and they must have their mail and reach their markets for purposes of purchase and sale; they must also have roads over which they may travel to the seat of state government. All the major activities of daily life require thoroughfares for travel...." (*Ada County v. Wright* (1939) 60 Idaho 394, 407, 92 P.2d 134, 140.)

Wherein lies the privilege in their use by the ordinary traveler, whether by foot or vehicle?

D. The danger posed by vehicles.

Early in our history, after "the [Cumberland] road had thus been made...it was still found to be incapable of withstanding the wear and tear produced by the number of carriages continually passing over it, *engaged in transporting passengers, or heavily laden with agricultural produce or merchandise;* and...would be entirely broken up and become unfit for use." [emphasis added] (*Searight v. Stokes* (1845) 44 U.S. 151, 163, 11 L.Ed. 537, 543.)

This court noted a distinction between ordinary vehicles and those moving in commerce: "[i]t is a special and extraordinary use materially differing from operation of automobiles or trucks by owners or their chauffeurs in the usual way for private ends. The running of automobiles necessarily is attended by danger to persons and property in the vicinity; and, when they are negligently driven upon city streets, the peril is great. The court below found that the operation of automobiles by such hirers is extra-hazardous to the public. The state...may prohibit or condition as it deems proper the use of city streets as a place for the carrying on of private business." (*Hodge Drive-It-Yourself Co. v. City of Cincinnati* (1932) 284 U.S. 335, 337, 76 L.Ed. 323, 52 S.Ct. 144, 145.)

I do not complain that the state may not regulate the use of vehicles, such as speed limits, traffic signals, lane markings, etc. My complaint lies with one or more license, privilege, or excise tax imposed as a condition precedent to the exercise of a right — to travel about this nation, even by auto vehicle, upon the roads.

III. *The State Violates My Federal Constitutional Right to Travel.*

The Appellate Division of the Superior Court upheld the trial court's ruling that all vehicular travel is a state-granted privilege, citing: "use of the public highways by motor vehicles, with its consequent dangers, renders the reasonableness and necessity of regulation apparent. The universal practice is to register ownership of automobiles and to license their drivers. Any appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highway is consonant with due process." (*Reitz v. Mealey* (1941) 314 U.S. 33, 36, 86 L.Ed. 21, 24, 62 S.Ct. 24, 26-27.)

However, *Reitz* is another example of a class of a litigants using the street as place of business and coming to court arguing that either it has a right to travel or to engage in interstate commerce. (Appellant was a chauffeur, see *Reitz v. Mealey* (D.C.N.Y.1940) 34 F.Supp. 532, 533.) I

emphasized below the undisputed facts show I was an ordinary, itinerate traveler, without using the streets as a place of business.

I think the heart of the matter lay in a similar decisions where this court determined, "[i]n the absence of national legislation covering the subject, a state may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles — those moving in interstate commerce as well as ***others.*** And to this end it may require the registration of such vehicles and the licensing of their drivers.... This is but an exercise of the police power uniformly recognized as belonging to the states and essential to the preservation of the health, safety, and comfort of their citizens; and it does not constitute a direct and material burden on interstate commerce." [emphasis added.] (*Hendrick v. Maryland, supra,* p.622.)

From the surrounding content and the body of the decision, the word "others" mean "those moving in *intrastate* commerce."

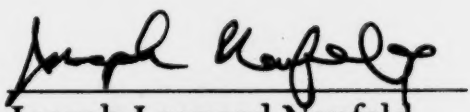
However, California courts include the itinerate vehicle traveler, such as myself, in their licensing and registration schemes. They conclude that such is consistent with due process and within the police powers of the states.

CONCLUSION

If my contentions are meritorious — that there is a distinction between a right of the ordinary, itinerate vehicle traveler, on the one hand, and a privilege of using the public streets or highways as a place of business, on the other hand — review under Rules §10(c) is not only proper, but also necessary. All states, not just California, consider any travel upon the streets or highways by auto vehicle a state-granted privilege, and impose various license, privilege or excise taxes as a prerequisite.

This court should grant this petition to determine whether the states unlawfully obstruct, impede or otherwise burden the citizen's national right to travel by erroneously classifying ordinary, common, and usual vehicular travel within the privilege of using the public streets and highways as a place of business.

Date: March 6, 2003



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APPENDIX A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN

No. CV-006196

JOSEPH LEONARD NEUFELD,

PLAINTIFF

v.

THE TOWN OF SAN ANSELMO,

DEFENDANT

[Decided and Filed: June 6, 2001]

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff's motion for summary judgment is denied. Government is permitted to regulate the conditions of travel by requiring driver's licenses, registration, and compliance with a myriad of traffic laws without infringing on the right to travel. (*Quackenbush v. Superior Court* (1997) 60 Cal.App.4th 454, 469.) The right of an individual to operate a private automobile cannot be equated with the fundamental constitutional right of an individual to travel. (*Tolces v. Trask* (1999) 76 Cal.App.4th 285, 289.) Plaintiff's own facts and evidence establish that he was the driver of a motorcycle and thus subject to the requirement of a driver's license. See facts #3 and #4 and evidence cited in support thereof. See Vehicle Code §305, §4000(a) and §12500(a).

APPENDIX B

SUPERIOR COURT OF CALIFORNIA, APPELLATE DIVISION, COUNTY OF MARIN

No. CV-022654

JOSEPH LEONARD NEUFELD,

PLAINTIFF/APPELLANT

V.

THE TOWN OF SAN ANSELMO,

DEFENDANT/RESPONDENT

[Argued: August 14, 2002
Decided and Filed: August 22, 2002]

OPINION

MCGIVERN, Presiding Judge of the Superior Court, Appellate Division; ADAMS and RITCHIE, Judges of the Superior Court, Appellate Division

The San Anselmo Police Department stopped appellant on November 5, 2000 at 11:45 p.m. Mr. Neufeld was driving an unlicensed motorcycle. He did not possess a valid driver's license. He was arrested and his motorcycle was impounded.

Appellant filed an action for replevin after his attempt to regain possession of the motorcycle failed because he could not produce a valid registration or driver's license, as required by the Vehicle Code.

Appellant has conceded that his motorcycle had no license plates and it was not registered. He acknowledges that the motorcycle was detained pursuant to Vehicle Code §22651, which allows impoundment of certain unregistered vehicles.

Appellant argues that application of §22651 unduly impinges on his right to travel. His argument is without merit. *Reitz v. Mealy* (1941) 314 U.S. 33. The government may regulate conditions of travel, including licensing, registration and compliance with traffic laws. *Quackenbush v. Superior Court* (1997) 60 Cal.App.4th 454; *Tolces v. Trask* (1999) 76 Cal.App.4th 285.

The Appellant's reliance on *Spilman v. California Highway Patrol* is misplaced, in light of the 1989 amendment to Vehicle Code §22651(o).

The judgment of the trial court is affirmed. Appellant's request for sanctions is denied.

Dated: August 22, 2002

/s/ Verna A. Adams
Judge of the Superior Court, Appellate Division

/s/ James H. Ritchie
Judge of the Superior Court, Appellate Division

/s/ William T. McGivern
Presiding Judge of the Superior Court, Appellate Division

APPENDIX C

THE CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT

No. A100391

JOSEPH LEONARD NEUFELD,

PETITIONER,

V.

APPELLATE DIVISION, SUPERIOR COURT OF MARIN COUNTY,

RESPONDENT;

THE TOWN OF SAN ANSELMO,

REAL PARTY IN INTEREST.

[Decided and Filed: October 16, 2002]

By the Court:

The petition for a writ of certiorari is denied. (Parrilli, Acting P.J. & Pollack, J. participating.)

Dated: October 16, 2002

/s/ Parrilli, Acting P.J.

APPENDIX D

IN THE CALIFORNIA SUPREME COURT
En Banc

No. S110841

JOSEPH LEONARD NEUFELD,

PETITIONER,

v.

APPELLATE DIVISION, SUPERIOR COURT OF MARIN COUNTY,

RESPONDENT;

THE TOWN OF SAN ANSELMO,

REAL PARTY IN INTEREST.

[Decided and Filed: December 11, 2002]

Petition for review is denied.

/s/ George
Chief Justice

APPENDIX E

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN

No. CV-006196

JOSEPH LEONARD NEUFELD,

PLAINTIFF

v.

THE TOWN OF SAN ANSELMO,

DEFENDANT

STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

1. On or about June 1, 1999 I purchased a 1993 Yamaha Seca II red motorcycle, engine #4DU026105 (hereinafter "PROPERTY") from Steve Anderson by giving him a valuable consideration.
2. Sometime shortly thereafter, I removed the license plate from PROPERTY and returned it to the DEPARTMENT OF MOTOR VEHICLES without registering it.
3. On or about 11:50 PM, November 5, 2000 I traveled upon PROPERTY at or near the intersections of RED HILL AVENUE, GREENFIELD AVENUE and SEQUOIA DRIVE in THE TOWN OF SAN ANSELMO.

4. At the above-mentioned time, date and place, SAN ANSELMO POLICE SERGEANT JOEL D. ERICKSON (hereinafter "ERICKSON") ordered me to pull over to the side of the road.
5. ERICKSON inquired as to the whereabouts of the PROPERTY'S license plate, as no plate was attached to PROPERTY, as well as whether I possessed a driver's license.

...

10. PROPERTY is designed, used and maintained primarily for private travel and is neither used nor maintained for the transportation of persons for hire, compensation, or profit nor designed, used, or maintained primarily for the transportation of property.
11. For all material purposes relevant to this motion, I have never transported people or property for hire, compensation, gain or profit, used the public roads or highways as a place of business, received compensation, profit or gain, directly or indirectly, through the use of the public streets or highways, acted in the capacity of a common carrier, nor held myself out to the public as a common carrier.
12. For all material purposes relevant to this motion, I traveled upon the public roads and highways in conjunction with my liberty and pursuit of happiness.

Date: April 30, 2001

/s/ Joseph Leonard Neufeld
Plaintiff